ANNUAL REPORT

ON

SWAMP LANDS,

BY

ISAAC R. HITT, STATE AGENT,

TO THE

GOVERNOR OF ILLINOIS.

DECEMBER 1, 1886.

SPRINGFIELD, ILL.:
H. W. ROKKER, PRINTER AND BINDER.
1887.

ANNUAL REPORT

ON

SWAMP LANDS,

BY

ISAAC R. HITT, STATE AGENT,

TO THE

GOVERNOR OF ILLINOIS.

DECEMBER 1, 1886.

SPRINGFIELD, ILL.:
H. W. ROKKER, PRINTER AND BINDER.
1887.

REPORT OF THE STATE AGENT.

STATE AGENCY OFFICE,
CHICAGO, ILL., Dec. 1, 1886.

To HIS EXCELLENCY RICHARD J. OGLESBY,
Governor of Illinois.

The work of the last two years has resulted in completing the selections of swamp and overflowed land in every county in the State, where I have been advised of the claims of the counties remaining unadjusted. These adjustments, made by the general government, growing out of the swamp land grant of September 28, 1850, are of four kinds, viz:

1. The patenting of the swamp selections where same have never been entered with cash, or located with land warrants.

2. Payment of money on the swamp selections entered with money.

3. The adjustment of the indemnity claims growing out of the swamp selections located with land warrants.

4. The adjustment of indemnity claims embraced in numbers 2 and 3 above, of swamp selections falling on the odd sections inside the six mile limits of the line of the Illinois Central Railroad.

There are some 2,000 acres of swamp selections remaining to be patented to the State. The money indemnity paid during the past two years aggregates $45,174.06, and has been paid to the following counties:

Bond	May 23, 1885	$2,823 10	Certificate No.	19,354
Bureau	March 24, 1885	1,912 51	"	43,895
Cass	Oct. 20, 1886	513 46	"	46,612
Calhoun	March 29, 1886	345 85	"	45,904
Champaign	Oct. 20, 1886	3,926 38	"	46,610
Clinton	March 11, 1885	3,038 74	"	43,743
Douglas	June 24, 1886	150 00	"	46,154
Edgar	Aug. 28, 1886	1,784 00	"	46,433
Effingham	July 1, 1886	6,590 48	"	46,320
Geeene	Oct. 20, 1886	355 80	"	46,611
Hamilton	May 1, 1886	1,415 20	"	46,000
Henry	July 19, 1886	1,440 42	"	46,385
Jackson	May 18, 1885	327 87	"	.....
Jersey	Oct. 20, 1886	80 00	"	46,632
Macon	March 29, 1886	503 63	"	45,903
McLean	June 19, 1886	958 00	"	46,322
McHenry	Sept. 4, 1886	604 41	"	46,556
Monroe	May 23, 1885	1,225 52	"	44,287
Moultrie	April 12, 1886	1,498 46	"	45,917
Piatt	Oct. 20, 1886	703 55	"	46,783
Perry	July 9, 1885	2,775 27	"	44,540
Sangamon	April 12, 1886	200 00	"	45,878
Scott	Aug. 28, 1886	210 00	"	46,434
Shelby	April 3, 1886	1,200 49	"	45,916
Schuyler	Aug. 28, 1886	210 77	"	46,436
Stephenson	Dec. 10, 1885	441 87	"	45,353
Wayne	June 9, 1886	4,458 57	"	46,021
Washington	May 22, 1886	4,237 00	"	46,020
Williamson	March 29, 1886	1,135 44	"	45,878
Woodford	July 1, 1886	107 27	"	46,321

The land indemnity claims growing out of the swamp selections located with land warrants, have not been adjusted in any county, from the fact that the Secretary of the Interior has not changed the ruling made by Secretary McClelland in 1855, where it was held that the State was confined, in its indemnity selections, to the public lands vacant and unappropriated, and situated within the limits of the State claiming the indemnity.

We are unable, under the law, to sue the United States. Under the law a mandamus proceeding will not lie, and the plea or defense of *res judicata* is submitted in every case we have taken before the Secretary of the Interior.

On the 22d day of January, 1886, we went in person before the Register and Receiver of the United States Land Office, at Little Rock, Arkansas, and attempted to locate some 3,600 acres of government land in Fulton county, Arkansas, with the land indemnity scrip issued on the 10th day of August, A. D. 1861, to the county of Christian, Illinois. The regular forms and rules of the general land office were complied with, the tender of office fees made to the receiver, and the application finally rejected; an appeal was taken to the Commissioner of the General Land Office, which was rejected. An appeal from this decision was then taken to the Hon. Secretary of the Interior, before whom the same is now pending. If the case is rejected there, we propose to wait till the land we applied to enter in satisfaction of the Christian county scrip, to the extent of 3,600 acres. is sold by the General Government, when we shall bring suit against the purchaser in the United States Court, and try the question of title.

The adjustment of the indemnity on the swamp selections falling on the odd sections within the six mile limits of the Illinois Central Railroad, whether entered with money, or located with land warrants, is held in abeyance also, on the ground that a former Secretary of the Interior held that the State was not entitled to the indemnity, on the ground that these lands were in a state of reservation on the 28th day of September, 1850, when the swamp land grant was made by Congress, and his decision, though erroneous, is binding on his successor. We attempted to settle this question, as well as the question relating to the right of the State to locate its indemnity scrip outside of the limits of the State, by instituting a suit in the Court of Claims, under what is known as the Bowman Act, passed March 3, 1883. We filed our petition April 12, 1884, and same is fully set forth in our annual report of January 30, 1885, page 5. The decision of the court was rendered at its December term in 1885, and was adverse to the State. [For decision see Exhibit D.]

Congress appropriated $20,000 at its last session to pay the expense of the government special agents in the examination of the swamp land selections of the several States.

J. C. Walker and A. B. Evans, late special agents, and assigned to work in Illinois, have both been discharged, and G. F. Elliott, of Ohio, has been appointed in their stead, and assigned to work in this State.

For the purpose of ending the troubles growing out of swamp land legislation, we procured the introduction of several bills in the

49th Congress. House bill No. 4792, introduced by the Hon. L. B. Caswell, of Wisconsin, was referred to the Committee on Public Lands, and was ably supported by Hon. L. E. Payson and Hon. S. Z. Landes, both members of Congress from Illinois, and both on that committee. The bill referred to is as follows:

A BILL *for the relief of purchasers and other grantees of the United States of certain swamp and overflowed lands, and to reimburse and indemnify certain States.*

Whereas the United States has, by various acts of Congress, granted to several of the States certain of the swamp and overflowed lands situate within their respective limits; and

Whereas some of said swamp and overflowed lands were thereafter erroneously sold and otherwise disposed of by the United States, in derogation of the rights of the States entitled thereto, and contrary to and in violation of the provisions of the grants aforesaid; and

Whereas no adequate indemnity to said States or relief to the purchasers of said lands has been hitherto provided: Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be the duty of the proper officers of the Treasury and Interior Departments to adjust and settle the claims of any State against the United States for all lands which have been or may hereafter be sold or otherwise disposed of by the United States that were included in any grant of swamp or overflowed lands to such State.

SEC. 2. That for all of said lands in any State which were sold for cash the said State shall have credit for the full amount of the purchase-money received by the United States, as of the last day of the year in which it was received, and the same shall be applied to the payment of the indebtedness, if any, of such State to the United States; and the balance, less such sum or sums as may have heretofore been paid or credited as aforesaid, shall be paid over to the Governor or other duly authorized agent of said State; and for all of said lands in any State located with warrants or scrip, or which were otherwise disposed of by the United States, and for which indemnity has not heretofore been granted, such State *shall* have indemnity in cash, the amount thereof to be limited to the price at which the lands were held at the date of their disposal by the United States, the said indemnity to be credited and paid as herein provided in the cases where lands were sold for cash: *Provided*, That the acceptance by any State *or its legal representative* of indemnity for any of the lands sold or otherwise disposed of by the United States, shall be a relinquishment and waiver of all its right, title and interest in and to such lands, and an acknowledgment and confirmation of the title thereto in the grantees of the United States.

SEC. 3. *That the provisions of this act shall embrace the swamp and overflowed lands on the odd sections within the six-mile limits of the line of railroad between Chicago and Mobile constructed under the act of Congress approved September twentieth, eighteen hundred and fifty.*

The report of the committee, No. 1089, on this bill, No. 4792, was presented to the House on the 17th of March, 1886, and is as follows:

REPORT No. 1089—SWAMP AND OVERFLOWED LANDS.

MARCH 17, 1886.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. VAN EATON, from the Committee on the Public Lands, submitted the following Report [to accompany bill H. R. 4792]:

The Committee on Public Lands, to whom was referred the bill (H. R. 4792) for the relief of purchasers and other grantees of the United States of certain swamp and overflowed lands, and to reimburse and indemnify certain States, have had the same under consideration and report:

There have been three grants of swamp and overflowed lands by the United States to States in which such lands were situate, namely, to Louisiana in 1849, to all public land States in 1850, and to Minnesota and Oregon in 1860. For all practical purposes these acts were alike in their provisions and granted to these States all the unsold lands of that character within their respective limits. They were grants *in præsenti*, without condition of any kind, and conveyed, *proprio vigore*, to the respective States all lands coming within the descriptive terms used in the statutes. Although the language of these statutes is so plain and unambiguous as apparently not to require judicial interpretation or construction, yet, upon one pretext or another, they have been before various courts, both State and national, for consideration and the right and the title of the States to these lands repeatedly and uniformly confirmed. The scope of the decisions rendered will sufficiently appear in the following brief quotations from the opinions of the Supreme Court of the United States.

In Railroad Company *vs.* Smith (9 Wallace, 95) that court says:

The act of September 28, 1850, was a present grant by Congress of certain lands to the States within which they lie, but by a description which requires something more than a mere reference to their townships, ranges, and sections to identify them as coming within it. * * *

By the second section of the act of 1850 it was made the duty of the Secretary of the Interior to ascertain this fact, namely, what tracts were so swampy, overflowed and wet, as that the major parts thereof were unfit for cultivation, and furnish the State with the evidence of it. Must the State lose the lands, though clearly swamp land, because that officer has neglected to do this? The right of the State did not depend on his action, but on the act of Congress; and though the State might be embarrassed in the assertion of this right by the delay or failure of the Secretary to ascertain and make out lists of these lands, the right of the State to them could not be defeated by that delay.

And in the later case of French *vs.* Fyan *et al.* (3 Otto, 169) the same court says:

This court has decided more than once that the swamp-land act was a grant *in præsenti*, by which the title to those lands passed at once to the State in which they lay, except as to States admitted to the Union after its passage.

It was not necessary that the States should submit any selections, or prefer any requests or make any demands. "The title to those lands passed at once," and it was made the duty of the Secretary of the Interior to ascertain the particular tracts of land which were included, described and conveyed in the grant and certify them to the states. Sales, locations and entries of these lands have been made and patents issued, notwithstanding the fact that it was not competent for the government to give a valid title to the said lands, so embraced in these grants, to any other than the grantees named in the acts of Congress. These facts coming to the attention of Congress, a remedial statute was passed in 1855, and another in 1857, providing indemnity to the States and confirming the title of the innocent purchasers and locators of the lands; but through oversight or purchase, because it was supposed the irregular practices which made these statutes necessary would not be continued, they were not made prospective and continuing in their application.

Notwithstanding the laws and the decisions of courts and the rulings of the department itself, the practice has continued of not considering any lands as coming within the purview of the swamp grants until the States should select and prove them to be such, and sales and other disposals of these lands have continued to the present time. Hence the necessity for further remedial legislation, which should be, if possible, co-extensive with the injuries inflicted.

The result of the continued disposal of these lands, to which reference has been made, has been and is a double injustice to the States, and manifests itself, (1) in the unjust and illegal diminution of a fund upon which they had a right to rely, and (2) in the initiating of a series of worthless and void titles and the litigations and losses to which they give rise, evidenced in part by the reports of over seventy cases decided in the courts of last resort in the several States, and cited in the report of the commission on the codification of the land laws of the United States, vol. 1, pages 57 and 58.

These conditions, in the opinion of your committee, give rise to just claims against the United States, both on the part of States and the individuals who find themselves without title to lands for which they have paid full consideration, and demand attentive consideration and speedy action by Congress.

It is for the adjustment of these claims, and these only, that the bill herewith reported provides. It does not make any grant or renew or enlarge or modify any previous grant. It does not reverse, set aside, or modify any decisions of the courts. On the contrary, it is in entire consonance with these and simply and only provides for carrying them into effect in a direct and equitable manner.

Briefly restated, the case is as follows:

There are certain moneys in the treasury of the United States which in law and in fact belong to certain States, because received by the United States for the property of these States wrongfully and illegally sold by it, and the proceeds thereof converted to its use. This bill provides that these moneys shall be returned to the rightful owners. To meet the further fact that the United States has assumed to dispose of other land not its own otherwise than for cash, this bill, when amended as proposed by the committee, provides that the United States shall make compensation therefor in cash at the rate at which the lands were held when disposed of, with the proviso that the acceptance of indemnity shall be a relinquishment of the title and rights derived through the grant and a confirmation of the title and right of parties holding under the subsequent irregular and unauthorized conveyances from the United States.

For the purpose of making the bill conform to what they believe to be the dominant public sentiment and to embrace all the cases calling for Congressional intervention, your committee recommend the following amendments, namely:

In section 2 strike out all after the word "State" in the twelfth line down to and including the word "may" in the twenty-first line, and insert in lieu thereof the word "shall." Also insert the words "or its legal representatives," after the word "State" in the twenty-seventh line, and strike out in same line the words "whether in cash or land." Also add a new section, as follows:

"SEC. 3. The provisions in this bill shall embrace the swamp and overflowed lands on the odd sections within the 6-mile limits of the line of railroad between Chicago and Mobile, constructed under the act of Congress approved September twentieth, eighteen hundred and fifty."

The recommendation of the committee to pay cash indemnity only is made from the fact that the public lands fit for agricultural purposes should be set apart for the purpose of settlement and homestead, and is in harmony with the growing sentiment of the people in all the States. The day for the issue of scrip which can be floated by speculators on the choicest portion of the public lands has passed.

With reference to the proposed section 3, which the committee have added, it will suffice to say it was found, on examination of the law and the facts, that the even-numbered sections were granted to aid in the construction of the railroad referred to, and that the swamp

lands on the odd sections within the 6-mile limits of the road that remained unsold on the 28th day of September, 1850, have been subsequently sold by the United States and the proceeds paid into the treasury—most of it thirty years ago. Where these odd sections were vacant on the 3d of March, 1857, the United States has certified them to the State under the swamp-land grant, but where the same have been sold the government has declined to pay indemnity, on the ground that they were withdrawn from sale by letter of the President eight days before the swamp-land grant was passed.

Your committee do not see that this letter of withdrawal took it out of the power of Congress to grant these lands to the States eight days after it was written. By the later act all the swamp and overflowed lands remaining unsold at the date of its passage were granted to the State within which they were situate without any reservation whatever. If therefore, the withdrawal of these lands was not a sale of them, they "remained unsold" and passed by the grant. But that said withdrawal was not a sale or so considered is evidenced by the fact that in due time the lands were restored to market, sold, and the money received paid into the treasury of the United States.

The same conditions surround these lands that surround all other swamp lands wherever situate. There is the same necessity for perfecting title in those persons to whom the United States has wrongfully conveyed these lands, and the same obligation on the part of the government to pay indemnity to the State. This section does not in any way enlarge the grant as originally made. It simply recognizes what the courts have repeatedly decided.

Your committee have had various bills before them and find they are similar to bills which have been before every Congress since 1865. Special acts have since that date been passed for several of the States or their grantees, but no general bill of a remedial nature has yet become a law.

In conclusion your committee would state that this bill, with the proposed amendments, makes provision for the final adjustment of the vexed questions arising out of the swamp-land grant as to all the States interested, and is in harmony with the views of all State and United States courts, as expressed in numerous decisions. They therefore report the bill back with amendments and recommend its passage.

A similar bill was introduced in the Senate by Senator Spooner, of Wisconsin, and referred to the Committee on Claims. Another bill, identical with House bill No. 4792, as reported to the House by the committee, was introduced in the Senate, and referred to the Committee on Public Lands. Each of these committees are expected to make a favorable report on these bills. Another bill, No. 6409, was introduced in the House on the 8th day of March, 1883, and referred to the Committee on Claims, of which Hon. William M. Springer is chairman. No report as yet has been made by the committee. For a copy of the bill see "Exhibit B."

I would recommend that the Legislature of Illinois, at its next session, pass a joint resolution memorializing Congress to pass both House bills Nos. 4792 and 6409, and the Senate bill which is identical with House bill No. 4792.

The Legislatures of the States of Iowa, Missouri, Louisiana, Mississippi and Arkansas have already memorialized Congress on this subject, and the Department of the Interior has again and again called the attention of Congress to this subject, stating that it was only by declaratory legislation that the honest claims of the several States growing out of the swamp land grant could be adjusted and paid.

As a matter of history, not generally known to the public, we would say that the swamp land grant of 28th September, 1850, was originally intended to benefit the State of Arkansas only, and relates to the land made swamp and overflowed by the Mississippi river and its tributaries running through that State. It was the idea of the late Stephen A. Douglas (then United States Senator) to make the grant more general in its effects, and to include all the States where swamp and overflowed land might be found, and section three of that act provided that in the list of swamp and overflowed lands there should be embraced all the Government lands which were too wet for cultivation without arti-

ficial drainage. It was this section three, inserted by the late Senator Douglas, which enlarged the grant from what was originally intended, and which gave to most of the northwestern States a large portion of the land which has been certified to those States under the grant.

There is no question but that Congress by that act did that which was for the best interests of the States interested.

The reasons assigned for this donation to the several States at that time were:

1. The alleged worthless character of the land in its natural condition, and the inexpediency of an attempt to reclaim them by national interposition.

2. The great sanitary improvement to be derived from the reclamation of extensive districts, notoriously malarial, and the probable occupancy and cultivation that would follow.

3. The enhancement in value and readier sale of adjoining Government lands.

So far as Illinois was concerned, the wisdom of the men who voted for the swamp land grant cannot be questioned. The State, soon after the grant, made the counties the beneficiaries of the grant, and required them to use the proceeds for draining the lands. The results may be summed up as follows:

Between 1850 and 1886, it is estimated that over four millions of money have been expended in drainage, and more than 300 tile factories are in active operation in the State. The fever and ague has disappeared from the neighborhood of wet, swampy and overflowed lands. The value of the swamp lands increased from 100 to 500 per cent., while the adjoining lands have correspondingly improved in value. Within ten years following the passage of the act every acre of Government public land had been disposed of.

The adjustment of the claims of the State under the several acts of Congress relating to the swamp land grant has been attended with many difficulties, many of which might have been avoided, if the department designated by law to adjust these claims had always been divested of prejudice and had not made a few unfortunate decisions, which, under the rule, are binding upon their successors in office.

For a copy of the swamp land grant, the indemnity grant, the instructions, rules and regulations of the Department of the Interior, see Exhibit "A."

Since our last report several cases involving the status of title to swamp lands have been before the State courts. Our attention has been specially called to two—one in Cook county, the other in Iroquois county—the latter case decided by Judge Blades. We give his decision in full, as follows:

GEORGE H. WHITE *vs.* HENRY C. MOSHIER. } In Iroquois Circuit Court. March Term, 1885. Blades, J.

The omnibus clauses in the deed of Iroquois county to Tallman was sufficient to convey the land involved in this case, if it became vested in the State and in the county by virtue of the swamp land grant, or was confirmed to the State by the act of Congress of March 3, 1857. This land is situated within the six-section grant by Congress to this State, to aid in the construction of the Illinois Central railroad; and it is contended by the defendant that the odd

numbered sections within that limit, even though swamp land, did not pass under the swamp land act of Sept. 28, 1850, and that it was not affected by the confirmatory act of 1857. There is no exception or reservation in either of these acts that can be construed to affect lands of this character, and so I have examined somewhat diligently into other sources of information, without being much aided by the citations of the defendant, to ascertain how the opinion has come to prevail, as I think it has to a considerable extent, that the odd numbered sections within the limit of the railroad grant, though concededly swamp, did not pass under the acts of Congress. I can find nothing whatever which in my judgment gives any support to that position, except the ruling of the Secretary of the Interior, McClelland, in 1855.

If this land was swamp land within the meaning of the act of Sept. 28, 1850, of which, of course, there is no proof in this case, there could not, of course, be any question that the title passed to the State by virtue of that act, even though the lands had never been approved and certified as such by the Secretary of the Interior, as has been described by the Supreme Court of the United States. But since there is no such proof in the case, and since the land was not embraced in the list of original selections and certification, reliance is had by the complainant upon a subsequent selection by the State agent, and the confirmatory act of March 3, 1857. That selection and that act are conclusive that this is swamp land; that fact, for the purposes of this case, is beyond contention.

It is true that the President undertook to reserve or withdraw the odd numbered sections within the six-section grant from the market, or from entry or preëmption, until the grant for railroad purposes could be precisely ascertained by the location of the railroad; but I can find no authority conferred on the President to take such action, and I do not believe any existed; nor was it at all necessary, so far as the odd numbered sections were concerned, that such action should be taken, as in no event could these lands be affected by the location of the railroad line.

I can see no reason to make any doubt whatever that this tract of land is within the scope of the swamp land legislation, notwithstanding such action of the President.

The decision of Secretary McClelland, based principally upon that action of the President, if I recall his ruling correctly, cannot be held to be *res adjudicata*. It was a mere executive ruling for the guidance of the Interior Department, and as matter of law was erroneous. The entry and patent of 1854 were vacated and set aside, and whether it was legally done or not can make no difference to the defendant, since the patentee, nor any one claiming under him, does not complain, and must be treated as if such facts had never existed. The entry and patent through which defendant claims were subsequent to the act of 1857, when the government had no color of claim to the land, and it passed no title to the patentee; and the patent cannot serve the office of active color of title for the reason that the testimony as to the uninterrupted payment of taxes for the requisite length of time is unsatisfactory and unconvincing.

I started out in this case with a prepossession in favor of the defendant's claim, but am now entirely satisfied that the law is against him, and I must accordingly pass a decree for the complainant.

FRANKLIN BLADES, *Judge.*

It is well known that the United States cannot be sued in the courts of the land without special permission of Congress. To this end various bills have been introduced in Congress, embracing certain special cases, or classes of claims, and have passed into law, but none of them are broad enough in their provisions to entitle the State of Illinois, or its grantees, to be heard in the courts. At the first session of the Forty-ninth Congress, H. R. Bill 5314 was introduced by Hon. Wm. Warner, of Missouri, providing for the settlement of final claims against the United States, by conferring jurisdiction upon the Court of Claims to investigate these claims and report to Congress their finding as to the facts and the law relating to same. For a copy of said bill, and report of the committee on claims, see exhibit C.

The general impression among members of Congress is that this bill, probably with some modifications, will pass both houses of Congress at the coming session.

Since our last report the General Land Office has established the practice of holding for rejection the selections of swamp lands, so far as concerned those tracts of land on which final proof has not been made and filed with the Department. On the 30th of July, 1886, we filed a protest against this practice of the office, in the following letter:

CHICAGO, ILL., July 30, 1886.

WM. A. J. SPARKS, *Commissioner General Land Office, Washington, D. C.:*

DEAR SIR—In the adjustment of the claims of the State of Illinois for indemnity, growing out of the swamp land grant, I desire to call the attention of your Department to the fact that, in cases held by you for rejection, and where you give the State sixty days to appeal to the Hon. Secretary of the Interior, it is utterly impossible to perfect the appeal in cases where the swamp selections have been located with land warrants, and in all such cases I would request that your action on such selections be suspended until such time as the State offers proof to show the character of the land. The general government has neither a legal nor equitable right to reject the selections on the *ex parte* statement of her special agent, and in the absence of proof made by the State. As I understand it, the State and the Department have agreed that, as to the swamp land selections located with land warrants, no testimony touching the character of the lands will be offered by the State until such time as Congress, or the Department, provides for the payment of indemnity on the same.

As to the rule of practice of giving the State sixty days within which to appeal from the decision of the Commissioner of the General Land Office, to the Secretary of the Interior, in cases where swamp selections have been sold by the United States for cash, and held for rejection, I would ask a modification of the rules as to time, for the following reasons: Each county in Illinois is the beneficiary of the original swamp land grant, as to swamp land within its limits. The State has no control or jurisdiction over these lands, or over the indemnity on the same. Our counties are controlled and governed by either a board of supervisors or a county commissioners' court. As a rule they meet but *twice in a year*, and as agent of the State I am governed by them in my action in the matter of appeals. I would suggest that the term of six months be given, in lieu of sixty days. Less time would work a hardship in many cases.

Yours, etc.,

ISAAC R. HITT, *State Agent.*

To which we received the following reply:

GENERAL LAND OFFICE,
WASHINGTON, D. C., Aug. 7, 1886.

Isaac R. Hitt, Esq., Chicago, Ill.:

SIR—In reply to yours of the 30th ult., I have to say that it is not the purpose of this Department to entertain, either for examination or rejection, swamp land selections for indemnity that were located with land warrants, until provision has been made for paying said indemnity. Hereafter action will be taken only on selections sold for cash.

With reference to your request for more time for appeal, your attention is directed to Rule 86 of Rules of Practice, a copy of which is enclosed.

Very respectfully,

S. M. STOCKSLAGER, *Assistant Commissioner.*

The rule referred to is as follows:

"RULE 86.—Notice of an appeal from the Commissioner's decision must be filed in the General Land Office, and served upon the appellee or his counsel, within sixty days from the date of the service of notice of such decision."

Since our last report the following counties have been visited by the United States special agents: Cass, Clay, Coles, Douglas, Effingham, Greene, Hamilton, Henry, Jersey, Livingston, McLean, McHenry. Menard, Moultrie, Piatt, Shelby, Woodford and Whiteside.

The counties remaining to be visited by the special agents are as follows: Adams, Henderson, Jefferson, Marshall, Peoria, Pulaski, Union and Warren.

The adjustments are made in the counties of Livingston, Menard, Tazewell and Whiteside, but the indemnity not yet paid.

Twelve cases are now pending before the Honorable Secretary of the Interior on appeal from the decisions of the Commissioner of the General Land Office.

Messrs. Curtis and Burdett, attorneys, of Washington, D. C., are assisting in the appealed cases.

There remains but little to be done by the counties under the swamp land grant. The work has been carried on systematically since 1875, and our entire time has been devoted to it. So far it has not proven remunerative, owing to the difficulties alluded to elsewhere in this report. If Congress should pass the bill now pending, the whole work could be closed up before the meeting of the Legislature in 1888. If Congress fails to pass the bill, we hope to attain the same end through a decision of the courts, resulting in a change of ruling in the Department. With this change the work should be closed up completely in two years.

In conclusion, I beg to thank the Governor and the State officers, our Senators and Representatives in Congress, and the officials of the various counties, for their courtesies and valued coöperation.

Respectfully submitted,

ISAAC R. HITT, *State Agent.*

EXHIBIT "A."

An Act to enable the State of Arkansas and other States to reclaim the Swamp Lands within their Limits. (Approved Sept. 28, 1850.)

SEC. I. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That to enable the State of Arkansas to construct the necessary levees and drains to reclaim the swamp and overflowed lands therein, the whole of those swamp and overflowed lands, made unfit thereby for cultivation, which shall remain unsold at the passage of this act, shall be, and the same are hereby granted to said State.

SEC. II. *And be it further enacted*, That it shall be the duty of the Secretary of the Interior, as soon as may be practicable after the passage of this act, to make out an accurate list and plats of the lands described as aforesaid, and transmit the same to the Governor of Arkansas; and at the request of said Governor cause a patent to be issued to the State therefor; and on that patent, the fee simple to said lands shall vest in the said State of Arkansas, subject to the disposal of the legislature thereof: *Provided, however*, that the proceeds of said lands, whether from sale or by direct appropriation in kind, shall be applied, exclusively, as far as necessary, to the purpose of reclaiming said lands by means of the levees and drains aforesaid.

SEC. III. *And be it further enacted*, That in making out a list and plats of the land aforesaid, all legal subdivisions, the greater part of which is "wet and unfit for cultivation," shall be included in said list and plats; but when the greater part of a subdivision is not of that character, the whole of it shall be excluded therefrom.

SEC. IV. *And be it further enacted*, That the provisions of this act be extended to and their benefits be conferred upon each of the other States of the Union in which such swamp and overflowed lands, known and designated as aforesaid, may be situated.

An Act for the relief of Purchasers and Locators of Swamp and Overflowed Lands. (Approved March 2, 1885.)

SEC. I. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the President of the United States cause patents to be issued, as soon as practicable, to the purchaser or purchasers, locator or locators, who have made entries of the public lands, claimed as swamp lands, either with cash, or with land warrants, or with scrip, prior to the issue of patents to the State or States, as provided for by the second section of the act approved September twenty-eighth, eighteen hundred and fifty, entitled "An act to enable the State of Arkansas and other States to reclaim the swamp lands within their limits," any decision of the Secretary of the Interior, or other officer of the government of the United States, to the contrary notwithstanding: *Provided*, that in all cases where any State, through its constituted authorities, may have sold or disposed of any tract or tracts of land, to any individual or individuals, prior to the entry, sale or location of the same, under the pre-emption or other laws of the United States, no patent shall be issued by the President for such tract or tracts of land, until such State, through its constituted authorities, shall release its claim thereto, in such form as shall be prescribed by the Secretary of the Interior: *And provided, further*, that if such State shall not, within ninety days from the passage of this act, through its constituted authorities, return to the general land office of the United States a list of all the lands sold as aforesaid, together with the dates of such sale, and the names of the purchasers, the patents shall be issued immediately thereafter, as directed in the foregoing section.

SEC. II. *And be it further enacted*, That upon due proof, by the authorized agent of the State or States, before the Commissioner of the General Land Office, that any of the lands purchased were swamp lands, within the true intent and meaning of the act aforesaid, the purchase money shall be paid over to the State or States: and where the lands have been located by warrant or scrip, the said State or States shall be authorized to locate a quantity of like amount, upon any of the public lands subject to entry, at one dollar and a quarter per acre, or less, and patents shall issue therefor, upon the terms and conditions enumerated in the act aforesaid: *Provided, however*, that the said decisions of the Commissioner of the General Land Office shall be approved by the Secretary of the Interior.

No. 319. An act to confirm to the several states the swamp and overflowed lands selected under the act of September 28, 1850, and the act of March 2, 1849.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled: That the selection of swamp and overflowed lands granted to the several States by the act of Congress, approved September 28, 1850, entitled "An act to enable the State of Arkansas and other States, to reclaim the swamp lands within their limits," and the act of March 2, 1849, entitled "An act to aid the State of Louisiana in draining the swamp lands therein," heretofore made and reported to the Commissioner of the General Land Office, so far as the same shall remain vacant and unappropriated, and not interfered with by an actual settlement under any existing law of the United States, be and the same are hereby confirmed, and shall be approved and patented to the said several States, in conformity with the provisions of the act aforesaid, as soon as may be practicable after the passage of this law: *Provided, however*, that nothing in this act contained shall interfere with the provisions of the act of Congress entitled "An act for the relief of purchasers and locators of swamp and overflowed lands," approved March 2, 1855, which shall be and is hereby continued in force, and extended to all entries and locations of lands claimed as swamp lands, made since its passage.

Approved March 3, 1857.

RULES AND REGULATIONS

Adopted by the General Land Office, with the approval of the Secretary of the Interior, in regard to the proof required in claims for indemnity under the Act of March 2, 1855, extended by the Act of March 3, 1857 (Sections 2482, 2483 and 2484, Revised Statutes of the United States), for "Swamp and overflowed lands" sold by the United States prior to March 3, 1857.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., August 12, 1878.

In order to dispose of the claims for indemnity provided for by the act of Congress approved March 2, 1855, entitled "An act for the relief of purchasers and locators of swamp and overflowed lands," which act was extended by the act of March 3, 1857 (as revised now sections 2482, 2483 and 2484 of the Revised Statutes of the United States), the following rules and regulations in regard to the "due proof" to be made to the Commissioner of the General Land Office, under the second section of said first mentioned act (as revised, now section 2482, Revised Statutes of the United States), in order to obtain the indemnity aforesaid, are adopted.

The Governor, or other duly authorized officer or agent of the State claiming indemnity, will be required to furnish this office with a list of the lands for which indemnity is claimed. As soon as practicable after the receipt of this list an agent will be appointed to make an examination in the field of each of the tracts therein described, and secure such reliable

information as to the character thereof as can be obtained from personal examination and observation, and by inquiry of the owner or resident thereon, if any there be, and of persons residing in the vicinity having personal knowledge of the past and present character of the land. Upon the completion of this examination at least thirty days' notice will be given the State, or claimants under the State, of the time and place when and where testimony will be received touching the character of the lands described in the list filed in this office.

At the times and places thus fixed the agent of this office will attend for the purpose of examining witnesses and adopting such other measures as may be necessary to protect the interests of the Government.

The evidence offered by the State, or its agent, as to the character of the land, must be the testimony of at least two respectable and disinterested persons who have personal and exact knowledge of the condition of the land during a series of years extending to the date of the swamp grant (September 28, 1850).

Where the testimony of witnesses having a knowledge of the condition of the land at the date of the grant cannot be obtained, the evidence of at least two respectable and disinterested persons, who have a knowledge of the land during a series of years extending as near to the date of the grant as pos ible, may be presented; but before presenting this secondary evidence the State Agent should file his own affidavit setting forth fully and satisfactorily the reasons for the failure to present the testimony of the first-mentioned class of witnesses, and also setting forth that the witnesses whose testimony he offers have the best knowledge of the land extending nearest to September 28, 1850, of any that can be obtained.

The testimony of each witness should not only show that at the time when he first knew the land the greater part of each forty-acre tract, or other smallest legal subdivision, was swamp or overflowed within the meaning of the grant, but it must be full and explicit on the following points:

The cause of the swampy character or overflow, with the time of the year and the length of time such was the condition of the land, and how much or what proportion of the tract was thus rendered unfit for cultivation in its natural condition;

The nature and extent of the means necessary to reclaim the land:

The kinds of timber, plants, shrubs, grasses, &c., growing on the land, and whether or not plowing and the removal of timber or other natural growth would not have caused the land to become dry enough for cultivation without ditching, draining or protection from overflow;

The names of water courses, lakes, &c., on or near the land, with a description of the size of the same, and, where not on the tract, the direction and distance from it;

The general character of adjacent and surrounding lands;

The present condition of the land, and in case any changes have taken place within the knowledge of the witnesses the nature and cause of such changes, with a full description of such artificial means of reclamation as have had any effect on the character of the land, and all other facts known to the witnesses which may tend to show the true condition of the land.

The witnesses should be required to state facts, not opinions, and their testimony should be as full and complete as to every fact within their knowledge as if it were needed to establish the character of the land to the satisfaction of a judge or jury.

Ex parte affidavits will not be considered, and all testimony must be taken in the presence of the agent of this office.

Depositions may be taken before any officer authorized by law to administer oaths; provided, that if taken before an officer other than the clerk of a court of record having a seal, the official character of such officer shall be established by the certificate of the clerk of the proper court of record under the official seal thereof.

In all cases the disinterestedness of the witnesses must be established under oath, and the credibility of the witnesses must be certified to by the officer taking the depositions, or established by the oath of witnesses to whose credibility he certifies.

In cases where the agent of this office shall be satisfied, from the previous examination in the field, that any tract or tracts are of the character contemplated by the swamp grant, the testimony of two witnesses as above mentioned will be deemed sufficient proof; but in cases where said agent shall not be so satisfied from the previous examination in the field, he will take measures to secure such additional evidence as may be necessary to fully determine the character of the land, by obtaining the testimony of the owner or occupant of the land, or, if those persons have testified, other well-informed persons residing in the vicinity of the land, allowing the agent of the State full opportunity to cross-examine such witnesses should he desire to do so.

If the agent of this office shall be in doubt as to the amount of a particular tract which is swampy or overflowed, he will have a survey and plat made of the tract by a competent surveyor, in order that the exact amount of swampy or overflowed land in the tract may be shown.

After the testimony is taken the agent will make a full report to this office upon each of the tracts upon which testimony is taken, together with his opinion as to the real character of each of said tracts.

These regulations will supersede all former regulations; but cases where proof has heretofore been taken and filed in this office will be examined and determined upon such proof, if it is found to be in strict accordance with the regulations existing at the time of taking the same.

J. A. WILLIAMSON,
Commissioner

DEPARTMENT OF THE INTERIOR, August 20, 1878.

Approved:
A. BELL, *Acting Secretary.*

EXHIBIT "B."

Forty-ninth Congress, First Session. H. R. 6409.—In the House of Representatives, March 8, 1886. Read twice, referred to the Committee on Claims, and ordered to be printed.

Mr. Springer introduced the following bill:

A BILL *for the relief of Gallatin, Bureau, and other counties in the State of Illinois.*

Whereas indemnity certificates numbered one to thirteen, inclusive, were issued to the State of Illinois for the benefit and use of Gallatin, Bureau, Henry, Fayette, Christian, Lawrence, Lake, Tazewell, Cass, Warren, Henderson, Moultrie, Mercer and Kane counties, in said State, under the act of Congress approved March second, eighteen hundred and fifty-five; and

Whereas said indemnity certificates authorize the State of Illinois to locate public lands in Illinois to the extent of ninety-nine thousand seven hundred and ninety-eight and seventy-three hundredths acres, in full satisfaction thereof; and

Whereas there is no public land in the State of Illinois to satisfy said indemnity certificates, and was not at the date of the issue of said certificates; and

Whereas the counties of Champaign and Clay, in said State, were and are now entitled to indemnity certificates of like nature, entitling the State of Illinois to locate eighteen thousand one hundred and nine and sixty-four hundredths acres of the public land for the benefit of said counties, as certified by the Secretary of the Interior; therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay to the following counties in the State of Illinois, or to their assigns, on the surrender of the indemnity certificate held by either of them, as follows:

To Gallatin county, the sum of three thousand and twenty-three dollars and eighty-six cents.

To Bureau county, the sum of ten thousand three hundred and seventy-four dollars and ninety-seven cents.

To Henry county, the sum of seventeen thousand two hundred and seventy-three dollars and forty-eight cents.

To Fayette county, the sum of six thousand three hundred and fourteen dollars and twenty-five cents.

To Christian county, the sum of eighteen thousand seven hundred and sixty dollars and seventy-three cents.

To Lawrence county, the sum of twenty-four thousand four hundred and fifty-nine dollars and ninety-five cents.

To Lake county, the sum of five hundred dollars.

To Tazewell county, the sum of seventeen thousand four hundred and thirty-seven dollars and thirty-one cents.

To Cass county, the sum of two thousand three hundred and fifty dollars.

To Warren and Henderson counties, the sum of one thousand and one dollars and seventy-one cents.

To Moultrie county, the sum of twenty-two thousand and thirty-six dollars.

To Mercer county, the sum of one thousand one hundred and sixty-four dollars and sixty-three cents.

To Kane county, the sum of fifty dollars.

To Champaign county, the sum of fifteen thousand four hundred and thirty-three dollars and thirteen cents.

To Clay county, the sum of seven thousand two hundred and three dollars and ninety-one cents.

The said sum or sums, when paid, to be in full satisfaction of said indemnity certificates; and in the case of the counties of Champaign and Clay the county authorities of each county shall receipt to the Secretary of the Treasury for the same.

EXHIBIT "C."

Forty-ninth Congress, First Session. H. R. 5314, [Report No. 562.]—In the House of Representatives, February 8, 1886. Read twice, referred to the Committee on Claims and ordered printed, February 16, 1886. Reported with an amendment, referred to the House Calendar, and ordered to be printed.

Mr. William Warner introduced the following bill:

A BILL *conferring jurisdiction upon the Court of Claims to investigate private and domestic claims and demands, other than war claims, against the United States.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congpess assembled, That jurisdiction is hereby conferred upon the Court of Claims to investigate and make a finding of fact in any claim or demand, other than war claims, against the United States, pending before any committee of the Senate or House of Representatives, or before either house of Congress, upon the same being referred to the court under this act: *Provided,* that all claims and demands not presented to said court by the claimant or claimants within the period of two years after such claims and demands have been referred to the court under this act shall be forever barred.

Sec. 2. That the court is required to promptly consider all claims and demands referred under this act and presented to the court, under such needful rules and regulationss as it may adopt, and subject to the provisions of existing laws not inconsistent with this act. That on the first day of every December session of Congress the clerk of the Court of Claims shall transmit to each house of Congress a full and complete statement of the findings of fact in each claim or demand investigated under this act and not theretofore reported, stating what amount, if anything, is due the claimant or claimants; whether the claim or demand is founded upon any act of Congress, or upon any contract, express or implied; the laches or diligence of the claimant or claimants in presenting the claim or demand against the United States; and such other findings of fact and conclusions of law as the court shall deem material to enable Congress to pass upon such claim or demand. That until such claim or demand is finally investigated and reported upon to Congress by the court as herein provided, neither house of Congress shall consider the same, by bill or otherwise, in reference to allowing any such claim or demand.

Sec. 3. That whenever any private or domestic claim or demand, other than war claims, against the United States is pending before any committee of the Senate or House of Reprerentatives, or before either house of Congress, which involves the investigation of facts, the committee or House may cause the same, with the vouchers, papers, proofs and documents pertaining thereto, to be transmitted to the Court of Claims, and the same shall there be proceeded with as herein provided. When claims and demands are referred to the court under this act, by any committee of the Senate or House of Representatives, such committee shall, before the end of the session of Congress at which such reference was made, report the fact in writing to the House of Congress by which such committee was appointed. That nothing in this act shall be construed as committing the United States to the payment of any such claim or demand, and that no judgment shall be entered thereon by the court.

Sec. 4. That at the adjournment of each Congress all bills relating to private and domestic claims and demands, other than war claims, against the United States, which may be pending in either house of Congress or before any committee of either House, shall, by the Secretary of the Senate and the Clerk of the House respectively, be referred to the Court of Claims, together with all papers relating thereto, as hereinbefore provided; and all such claims and demands shall be investigated by the court as provided in this act. The Secretary of the Senate and the Clerk of the House shall enter in their journals of the respective houses, and in the Congressional Record a statement showing what bills have been so transferred.

Sec. 5. That after the passage of this act neither house of Congress shall consider or entertain, for any purpose other than that of referring the same to some judicial tribunal or commission under existing law, any private or domestic claim or demand against the United States which involves the investigation of facts, other than war claims, until such facts shall have been investigated by such judicial tribunal or commission and the findings of fact reported to Congress.

Sec. 6. That it shall be the duty of the Attorney-General, or his assistants under his direction, to appear for the defense and protection of the United States in all cases which may be transmitted to the Court of Claims under this act.

Sec. 7. The reports of the Court of Claims to Congress under this act, if not finally acted upon during the session at which they are reported, shall be continued from session to session and from Congress to Congress until the same shall be finally acted upon.

Forty-ninth Congress, 1st session, House of Representatives.—Report No. 562. Conferring jurisdiction upon the Court of Claims to investigate private and domestic claims and demands, other than war claims, against the United States. February 16, 1886.—Referred to the House calendar and ordered to be printed.

Mr. William Warner, from the Committee on Claims, submitted the following report, to accompany bill H. R. 5314.

The Committee on Claims, to which was referred House bill 5314, having fully considered the same, submit the following report:

The committee, in the discharge of its duties in the investigation of the large number of private and domestic claims and demands, other than war claims, against the United States, from the difficulty attending even a partial examination of the great mass of these claims, is deeply impressed with the urgent necessity of immediate legislation, referring them to some judicial tribunal where the facts upon which they are based may be thoroughly investigated.

The action of Congress in passing upon these claims is most unsatisfactory; its conclusion is, in almost every case, based on *ex parte* evidence furnished by the claimant. There are now pending before your committee nearly 1,000 bills and petitions. It is estimated that the number will reach 1,800 before the close of this Congress. Many of these claims are only for small amounts, while others involve hundreds of thousands of dollars. Nearly all of them require the investigation of disputed facts, a task for which judicial tribunals are especially adapted, a task from which Congress, in the interest of justice and general legislation, should be relieved. The history of past legislation shows that only a fraction over one per cent. of these bills, introduced for the relief of citizens for private and domestic claims against the government, other than war claims, ever pass Congress. It is a practical denial of justice to the citizen having an honest claim against the United States.

In the Forty-eighth Congress 913 bills and petitions were referred to the Committee on Claims. That committee, composed of honest and able men, was only able to report to the House 163—that is, about one-sixth of the bills referred to the committee—only 12 of which passed Congress and became laws. One claimant out of every 76 had his demand against the government finally acted upon. It will not do to say that the 901 claims that failed to receive Congressional approval were dishonest ones, or that they were less deserving of favorable consideration than the 12. It is safe to say that nearly all of these claims that failed of allowance in the last Congress have found their way into this, and, with others, have been referred to

your committee, presumably for an investigation of the disputed facts, the committee's conclusions and action of Congress thereon. Judging from the disposition of such bills in the past, there are now more private and domestic claims against the United States before your committee than will be disposed of in the next fifty years, under the present system. The citizen who has an honest claim against the government should not thus be trifled with; it is a mockery of justice.

Many of these claims have been before almost every Congress for a quarter of a century; a few did service in the First Congress, and are now prosecuted by the great-grandchildren of the original claimants. Of the claims now pending before your committee, many have been favorably considered in one Congress by one house, and in another Congress by the other house, without ever reaching the point of a final determination by receiving the concurrent action of both houses in any Congress; while others which have been rejected are again and again presented to Congress after Congress to take their chances in the legislative lottery.

The committee is of the opinion that every private and domestic claim against the government, in which the facts are not conceded, should be referred to a judicial tribunal for an ascertainment of the facts under the rules governing the introduction of evidence in courts of justice. This will protect the claimant who has an honest claim and prevent the allowance of claims having no merit upon *ex parte* evidence. It will be conceded that Congress has neither the time nor the disposition to properly investigate and make a finding of fact in each of these private and domestic claims; its province and duty is to provide a judicial tribunal for their ascertainment. This justice alike the government and the citizen demands.

The Committee on Reform in the Civil Service of the Forty-fifth Congress used the following language in its report, viz:

"From the nature of things, no tribunal can be less fitted to examine and decide upon private claims than the Congress. The organization of the body requires that the consideration of such claims must be first had in committee. The pressure of business is now so great that the claims before the committees are generally allotted for examination to subcommittees of one or two or three members. Claimants, therefore, naturally begin by seeking first a favorable committee to which to refer their claims, and next for a favorable selection from that committee to consider them. Evidence is then offered in the form of statements of *ex parte* affidavits. There is no answer, usually no personal appearance of witnesses, no cross examination, no opposing testimony, no inquiry by nor appearance on the part of the government, no general publicity, no check against fraud, and no prescribed rules and regulations for the investigation. Many of the claims are impressed with a sectional or party character especially calculated to exclude all judicial fairness in their consideration. Every person who has been charged by a committee with the examination of a private claim must have felt how unsatisfactory as a means to justice, even after a most conscientious examination, his consideration of it had been.

"The claim thus considered is reported to the committee, and by the committee to the House. How little time or opportunity the House has for considering those claims, and how liable they are to be determined blindly or partially, we all know. That such a determination of claims should naturally result in great delay and great abuses is unavoidable.

* * * * * * *

"It is hardly too much to say that a person with a just claim upon Congress might almost as well abandon it as pursue it, and that no one with an unjust claim, if only plausible, persistent, and needy, need be without some hope of success.

* * * * * * *

"How numerous these cases have become may be seen from the fact that while from the Twenty-eighth to the Thirtieth Congress the private bills and petitions of all kinds averaged only 525 in a Congress—of which the great body belonged to the class for which judicial tribunals have been since established—of late years the number of private bills alone belonging to the exceptional classes, relief for which rests in the discretion of Congress, amount in a session of Congress to about 2,500, or about five for each day Congress is in session. The gross injustice this necessarily occasions to meritorious claimants, and the inducement it offers for the presentation and pressure of groundless and unworthy claims, is obvious."

The evils as well as folly of attempting, or rather *pretending*, to adjudicate private and domestic claims by Congressional investigation is much more apparent now than in the Forty-fifth Congress. Congress should relieve itself from this judicial work, which it is ever making the pretense of doing, but never completes. It should not delay in referring these claims for judicial investigation, as to the facts, to some court where the claimant may obtain that hearing and consideration of his demand against the Government to which every citizen is entitled. There were 6,329 private bills introduced in the House during the Forty-eighth Congress. Of this number 682 became laws, of which 588 were pension bills. During that Congress there were but 1,861 bills of a general character introduced. Up to this date (February 13, 1886) there have been introduced in the House 5,554 bills, of which number 3,777 are of a private nature. The cost of printing the bills and resolutions of Congress for twenty yea s ending June 30, 1881, was $459,740.11. The cost for the five years ending June 30, 1886, will be as follows:

Year ending June 30, 1882	$61,882 74
Year ending June 30, 1883	23,556 08
Year ending June 30, 1884	74,720 26
Year ending June 30, 1885	21,616 33
Year ending June 30, 1886 (estimated)	100,000 00

Making the total cost of printing bills and resolutions of Congress for twenty-five years $741,515.52. It is estimated by the Public Printer that bills of a private nature comprise two-thirds of the whole number printed. The proportion of private bills introduced into the House at this session to date (February 13, 1886) is slightly greater than the estimate given.

If the cost of printing bills of a private nature bears the same proportion to the whole cost as their number bears to the whole number, the Government, on June 30 of this year, will have paid $494,343.68 in twenty-five years for printing bills of a private nature. The cost of printing the bills and resolutions referred to the Committee on Claims in the Forty-eighth Congress was, in round numbers, $8,000, or $666 for every one of the twelve private bills that became laws. Aside from the expenses for printing these private bills, it has been stated "that, if the time spent by Congress at every session in the consideration of private and domestic claims was reduced to dollars and cents, it would be found that those expenses are equal to the claims allowed, and probably to the sum claimed in those rejected." Yet this condition of things is permitted to go on from Congress to Congress. Bills for the relief of the same party or his heirs are introduced every two years.

The claimant comes and goes and dies, leaving his claim against the United States as a legacy to his children; for, if the claimant does not belong to the favored few, an ordinary lifetime is far too short to get a claim, however just, through Congress. If it is the policy of Congress to have the facts in each claim before it before passing upon the claim, in order that the citizen, in a reasonable time, may be paid that to which he is honestly entitled, and to insure the rejection of claims without merit, then Congress should, in the opinion of your committee, pass this bill. But if it is the purpose to continue these private claims from generation to generation, obstructing general legislation, then there should be no change; for the mind of man would be at a loss to suggest any other mode of procedure for passing upon private claims against the Government under the practical workings of which so little can be accomplished at so great an expense as the present system.

It is fair to assume that Congress is not afraid to trust the judiciary to ascertain the facts and to declare the conclusions of law as to such facts in any controversy, whether it be one between citizens or between a citizen and the United States. It is to be regretted that this Republic of ours should refuse to open its courts to any of its citizens having just demands against the Government. The evils, delays and injustice of examining and passing upon private claims resulted in the establishment of the Court of Claims to repress a mischief and to advance a remedy. Yet many private and domestic claims cannot be prosecuted in that court, they being barred by the statute of limitations. A just claim of the citizen against the Government should not be discharged by time; it should be paid regardless of its age. The claimant should be given the privilege of going into such court as the Congress shall designate, at least to establish fully the facts upon which he bases the claim or demand.

The other great nations go much further than is asked by this bill. In the Brown case (Sixth Court of Claims Report, 192), Nott, justice, in delivering the opinion of the court uses this language:

"That the legal redress given to a citizen of the United States against the United States is less than he can have against almost any Government in Christendom. The laws of other nations have been produced and proved in this court, and the mortifying fact is judicially established that the Government of the United States holds itself, of nearly all Governments, the least amenable to the laws. *. * * Of all the Governments of Europe, it is believed that Russia alone does not hold the state amenable in matters of property to the law. Of all the countries whose laws have been examined in this court, Spain only resembles the United States in fettering the judicial proceedings of her courts by restricting and leaving the execution of their decrees dependent upon the legislative will. * * * First in the high civilization that protects the individual and assures his rights, stands the great Empire of the German States."

In England, notwithstanding the principle underlying the English constitution, that the King can do no wrong, the citizen who has a claim against the Government is furnished with a mode of obtaining redress. Mr. Justice Davis, in the O'Keefe case (11 Wall., 183), says:

"The law allows him (the citizen) by petition to inform the King of the nature of his grievance, and as the law presumes that to know of an injury and to redress it are inseparable in the royal breast, it then issues, as of course, in the King's own name, his orders to his judges to do justice to the party aggrieved.

"This valuable privilege, secured to the subject in the time of Edward I, is now crystallized in the common law of England. As the prayer of the petition is grantable *ex debito justitiæ*, it is called a petition of right, and is a judicial proceeding to be tried like suits between subject and subject. It does not exist by virtue of any statute, nor does the recent legislation in England concerning it do more than to regulate the manner of its exercise, and to confer on the petitioner the privilege, not before granted, of instituting his proceeding in any one of the superior courts of common law or equity in Westminster."

This question received consideration of the Committee on Claims in the Thirtieth Congress. Hon. John A. Rockwell, a distinguished member of that committee, in an elaborate report, uses this language:

"The chairman of the committee has obtained from the ministers of several of the leading Governments of Europe, statements as to the course pursued in claims against the Governments of Russia, Austria, and the smaller German States, and in Holland and other nations. In relation to all mere matters of contract and ordinary trespasses, the Government is heard in the ordinary tribunals of the country, which are governed precisely by the same rules of law in these cases as between individuals. These Governments, although far behind us in civil freedom and constitutional liberty, never shirk from the full and fair investigation of these claims, and always submit to an adverse decision by the courts. It has been left to our own Government to deny to the citizen who has a demand against it, the power to try the question before its own courts, and yet has furnished no adequate tribunal for the purpose. [Report No. 498, vol. 3, R. of Com. 1st sess. 48th Cong.]"

The accumulation of private claims has been so great within the last twenty-five years as to burden several of the committees of Congress and to retard action upon a great proportion of the claims referred, at the same time compelling members, elected to participate in the examination and discussion of national subjects, to devote their time to the investi-

gation of these private claims. The committee is confronted with the fact that, work as it may in the ascertainment of the facts upon which the claimants seek redress. it is beyond its power to give anything like a satisfactory examination to but a very small portion of the claims before it. It is also aware of the further fact that but a few of the cases reported will ever receive the consideration of Congress. The liquidation of private claims by Congress, time has demonstrated to be expensive as well as dilatory. It should be the wish of every honest claimant, as well as that of the Government, to have the facts in every claim ascertained by a court, after a thorough examination of the witnesses for and against the claims. When the facts are so found, then, and not till then, can Congress satisfactorily or expeditiously pass on the private and domestic claims now pending before this committee.

Although the committee cannot suppose that the accompanying bill is the best possible substitute for the present very objectionable system of passing upon claims referred to it, yet it believes that this bill will furnish a remedy for many of the evils complained of; it is, at least, a step in the right direction. The bill may be obnoxious to the objection that it does not go far enough in affording a remedy to claimants. However true that may be, certain it is that, under its provisions, the facts will be ascertained under due forms of law, so as to protect the interests of all concerned: that if it becomes a law, and its provisions are strictly adhered to by Congress, it will afford relief now practically denied to those having claims against the Government, and will give members more time to attend to general legislation.

The committee recommend the following amendment to the bill:

In the ninth line of the first section strike out the word "finally."

And, when so amended, the committee recommend the passage of the bill

---

EXHIBIT "D."

COURT OF CLAIMS—DEPARTMENT CASE No. 12.

The State of Illinois v. *The United States.*

FINDINGS.

This case having been heard before the Court of Claims, the court, upon the evidence, finds the facts to be as follows:

I.

That after the passage of the act of September 28, 1850, (9 Stat. L., 519), the government of the United States continued to dispose of, and in fact did dispose of to individuals, large quantities of swamp and overflowed lands in the State of Illinois.

On the 31st day of March, 1858, Hon. Jacob Thompson, then Secretary of the Interior, decided that the State of Illinois was not entitled to locate swamp indemnity lands outside the limits of the said State, under the provisions of the act of March 2, 1855; said decision was affirmed by the following successive Secretaries of the Interior: Hon. Caleb B. Smith, May 8, 1861; Hon. W. T. Otto (acting secretary), March 12, 1863; Hon. O. H. Browning, February 8, 1868; Hon. C. Delano, February 2, 1874, and Hon. S. J. Kirkwood, October 19, 1881.

II.

That subsequently to the passage of the said act of September 28, 1850, large quantities of swamp and overflowed lands in the State of Illinois were located with military bounty land warrants and scrip, and among other swamp and overflowed lands so located were 5,763.13 acres situated in Clay county, Illinois.

III.

That pursuant to decisions of the Secretaries of the Interior the indemnity certificates issued to the State of Illinois since March 31, 1858, by the land office of the United States, have expressly declared that the land to be located thereunder must be public land of the United States within said State.

IV.

That there are no public lands of the United States in the State of Illinois subject to be taken by, or located with, swamp indemnity certificates.

V.

That the location of the line of railroad in the State of Illinois, authorized by the act of Congress approved September 20, 1850, (9 Stat. 466), was certified by the president and secretary of said company known as the Illinois Central Railroad Company, on December 11, 1851; that said certificate was filed in the general land office on February 13, 1852, and was approved by the Secretary of the Interior on February 20, 1852. That included within the sections of land designated by the odd numbers, lying within 6 miles of the line of railroad so located, are certain swamp and overflowed lands, for which the State of Illinois claims indemnity under the provisions of the acts of Congress approved March 2, 1855, and March 3, 1857.

VI.

That on the 19th day of September, 1850, the President of the United States, by executive order, suspended and reserved from sale the lands for 6 miles on each side of the now Illinois Central Railroad for not to exceed six months, and by further order of date February 25, 1851, September 4, 1851, December 31, 1851, continued the said suspension and reservation until June 30, 1862. That on the 3d of April, 1852, by a proclamation of the President of that date, the said lands were restored to entry and offered for sale. The power of the President so to suspend the sale of lands had been theretofore several times exercised, among others once in the year 1828 and once in 1844, as well as in other cases.

VII.

That on the 20th day of November, 1855, Hon. Robert McClelland, then Secretary of the Interior, decided that the State of Illinois was not entitled, under the provisions of the act of September 28, 1850, to the swamp and overflowed lands lying in the odd-numbered sections of land within 6 miles of each side of the line of the Illinois Central Railroad: that said decision was affirmed by Hon. C. Schurz, subsequent Secretary of the Interior, May 2, 1878, June 28, 1880, and after reference to the Attorney-General for an opinion, again affirmed by said Secretary March 2, 1881.

VIII.

That at the time of the passage of the act of September 28, 1850, the United States owned large tracts of public lands in the State of Illinois, unsurveyed and unappropriated, and unaffected by pre-emption or homestead claims, which lands were swamp and overflowed, and rendered thereby unfit for cultivation. Also that tracts of such swamp land were situate in the odd sections within 6 miles on either side of the Illinois Central Railroad as afterwards located; also tracts of such swamp lands situate between the 6-mile and 15-mile limits of said railroad, as located.

IX.

That the United States, on March 2, 1855, and for some considerable time thereafter, owned public lands in the State of Illinois of the class subject to entry at $1.25 per acre, and disposed of all of the same since said last named date except an amount heretofore located under swamp land certificates, and that the United States has still in other States and Territories public lands unappropriated and unreserved, and not interfered with by pre-emption or homestead claims.

X.

That the lands described as lying in township 5, and mentioned in the second part of the petition, were situate in Clay county, in the State of Illinois, and were swamp and overflowed on the 28th of September, 1850; and the same were duly selected and claimed by the State of Illinois as swamp and overflowed; that the same were either sold or located by the United States after September 28, 1850, and before March 3, 1857, and the State of Illinois claimed indemnity on the same, which the Department refused upon the ground that the same are situate within the six-mile limits of the Illinois Central Railroad, and for that reason did not inure to the State under the swamp land grant.

XI.

That in the year 1883 the State of Illinois caused to be selected the north half of the north-west quarter of section 17, T. 4 N., R. 5 E., in the county of Clay, in the State of Illinois, as swamp land, under the grant of September 28, 1850; that the same had been sold by the United States; that the State asked indemnity therefor, and it was refused by the Commissioner of the General Land Office, upon the ground that the same lies within the six-mile limits of the grant to the Illinois Central Railroad.

XII.

That there are still claimed by the State of Illinois tracts of land as indemnity land under the swamp land indemnity acts of Congress, and a cash indemnity under the aforesaid acts.

XIII.

That the Department of the Interior instructs its special agent to examine the tracts of land in Illinois upon which land indemnity is claimed, and to make report upon the same to the Department; that this practice has been followed for many years, and continues up to the time of the filing of the petition herein.

XIV.

That the Department has once allowed indemnity on a tract in the odd sections within the six-mile limits of said railroad—south half north-west quarter section 35, T. 4 N., R. 5 E.

OPINION.

DAVIS, J., delivered the opinion of the Court:

By an act approved September 28, 1850, swamp and overflowed lands unfit for cultivation were granted to the States wherein they were situated, to be drained and reclaimed. These lands not being definitely located, were in many instances innocently taken up by individuals, who in due course received title therefor from the Land Office. To remedy the difficulties which necessarily followed these double titles, Congress in 1855 (March 2, 1855, 10 Stat. L., 634) confirmed the patents issued to individuals, and granted to States the purchase money received for swamp lands sold, or if the lands had been located by warrant or scrip, then indemnified the States by giving them the right to locate "a quantity of like amount upon any of the public lands subject to entry at one dollar and a quarter per acre, or less." The States claimed the right under this act to receive scrip, which might be located upon any vacant public lands subject to entry at $1.25 per acre, or less, no matter where situated; but Mr. Hendricks, then Commissioner of the General Land Office, declined to issue any indemnity scrip not on its face confined to location within the borders of the State receiving it. His decision was affirmed by Secretary Thompson, and has since been adhered to by succeeding Secretaries of the Interior.

The second ground of complaint is based upon the construction by the Interior Department of an act passed eight days prior to the swamp land act, and which gave to the State of Illinois, to aid in the construction of the Illinois Central Railroad, the even-numbered sections on either side of that road, the odd-numbered sections, retained by the Government, being advanced to double minimum price and reserved from sale by the President until 1852. The State claims the swamp lands in these odd-numbered sections, or indemnity therefor, as granted to it by the act of September 28, 1850 (the "swamp land act"), notwithstanding the advance in price and the reservation of the lands by the President from sale or location. Secretary McClelland, in 1855, decided adversely to this claim of the States, and his ruling has since been regarded by the Department as conclusive.

The question of the jurisdiction and power of this Court, acting under the Bowman act (March 3, 1883, 22 Stats., 485), upon claims transmitted by the executive departments, is met upon the threshold of this case, and has been presented by counsel with great care and ability, both upon the argument of the motion to dismiss and upon the final hearing.

The Government cannot be sued without its consent, and may affix to that consent such conditions as it chooses, any resulting hardship being remediable only by the law-making power. The act under which this case is sent here, empowers us to consider those matters pending in the executive departments which are transmitted by the heads of those departments, and which are not barred by the provisions of any law of the United States. It is clear that this claim is pending in the Department of the Interior, within the meaning of the act, in so far as to give this court jurisdiction to consider it and to report its finding to the Secretary for his guidance. (*Jackson* v. *The United States*, 19 C. Cls., 508.)

In the *McClure Case* (19 C. Cls., 23), decided at the last term, the nature and extent of the jurisdiction conferred upon this court by the Bowman act were fully considered, and the conclusion was reached that section 1,093 of the Revised Statutes operates upon the act, and bars in this court any demand against the Government in which a final judgment has been rendered. The result of the reasoning in this case is, that the transfer of a claim from one of the departments to this court does not carry with it an increase of power over the matter in controversy, and if the head of the department be himself without jurisdiction or power to aid the claimant, the latter's legal position is not bettered by the transfer. The Bowman act is exceptional and peculiar in its provisions, and the jurisdiction conferred by it is very different from that granted by sections 1059 and 1063 of the Revised Statutes, being in its nature advisory.

As was said by this court in the McClure case, the intention of Congress in passing the act "seems to have been not to resuscitate claims which had previously been forever wholly barred from settlement, and not to open old outlawed and dead issues, while it was affording assistance and relief to the Departments in the investigation of claims alive and under consideration therein." The opinion in the case of Jackson (19 C. Cls., 504) also proceeds upon this theory, and closes by directing the clerk to certify to the Secretary of the Treasury, not that the decision made by his predecessor was or was not correct, but that he had "no power to open the claim for readjustment on its merits." What, then, is the power of the Secretary of the Interior over the case at bar, one branch of which was decided by Secretary Thompson in 1858, and the other by Secretary McClelland in 1855

As early as 1825, Mr. Wirt, then Attorney General, in a letter to the Secretary of the Navy, said that he had understood it to be a "rule of action prescribed to itself by each administration, to consider the acts of its predecessors conclusive as far as the executive is concerned." The Supreme Court in the case of the Bank of the Metropolis, decided in 1841 (15 Peters, 401), limited the right of an executive officer to review his predecessor's decisions "to mistakes of fact arising from errors of calculation, and to cases of rejected claims in which material testimony is afterwards discovered and produced;" in 1849, Mr. Attorney General Toucey held (5 Op., 29) that the principle of *res judicata* applied to claims "thus deliberately considered and rejected;" his successor, Mr. Reverdy Johnson (5 Op., 240), ruled that the decision of a Secretary of the Interior, "whether right or not," could not be overruled by his successor; and these decisions were followed consistently by other Attorneys General, among them Mr. Black (9 Op., 300 and 387); Mr. Stanbery (12 Op., 169 and 356); Mr. Hoar (13 Op., 33 and 226); Mr. Akerman (13 Op., 387); Mr. Bristow (13 Op., 457); and Mr. Williams (14 Op., 275). Even the opinion of Mr. Attorney-General Bates, in the Hot Springs case (10 Op., 61), cited as a departure from this line of authorities, does not seem to be such, but if it be, Mr. Bates retraced his steps the next year in the Dart case (10 Op., 225), wherein he reviewed and followed the opinions of his predecessors.

In 1864 (*Lavallette vs. The United States*, 1 C. Cls., 149) this court decided "that the head of a Department cannot, in a matter involving judgment and discretion, reverse the decision and action of his predecessor even in a matter relating to the general affairs and manage-

ment of the business of the Department," and the Supreme Court held in "tone *vs.* The United States (2 Wall., 535) that one "officer of the land office is not competent to cancel or annul the act of his predecessor;" finally, this court, at the last term in Jackson's case, followed the path so clearly defined by sixty years of consistent rulings, and held that the Secretary of the Treasury could not reopen a claim adjusted by his predecessor.

It is contended on behalf of the claimant that the decisions of the Secretaries were in their nature judicial, not administrative, and so beyond their power and jurisdiction, and further, that the precise limited question now presented has not been decided, that precise question being (to quote from the brief), "will the Department issue a certificate simply reciting the words of the statute of March 2, 1855, as to authority to locate land in lieu of certain 5,763 acres heretofore located, which was also sold by the United States, situate in Clay county, Illinois, leaving the legal effect of such certificate to be hereafter tested by submission to some court of competent jurisdiction."

We cannot agree that the decisions of the Secretaries upon the questions of statutory construction involved in this case were beyond their power to make; it is a necessary daily duty of administrative officers to construe the laws by virtue of which they officially exist, which prescribe their duties and limit their powers. How far these decisions, necessarily made in the discharge of official duty, are binding upon others, need not now be considered, as they clearly are binding upon the successors and subordinates of these officers until reversed by competent authority, and such authority has not been given to this court by the Bowman act. The decisions and opinions already cited in relation to the power of one executive officer to reverse the ruling of his predeeessor sprung from questions involving interpretations of the law, and in Jackson's case this court described the ruling of the Secretary which could not be reopened by his successor as one upon "a question of the construction of a statute."

Nor is the matter presented here so limited, as the complainant contends, or confined to any specific lot of land. The Secretary of the Interior describes it as the "claim of the State of Illinois to locate swamp land indemnity scrip outside of the State, and to the swamp lands in the odd-numbered sections lying within 6 miles on each side of the Illinois Central Railroad," and this submission cannot be limited or changed by the claimant. The Secretary requests the findings of this court not in relation to the Clay county lands alone, but upon the broad question of the right of the State to the lands described or to indemnity scrip not confined to location within the State. Further the decisions of Secretaries Thompson and McClelland were general in their intention and application, covering all lands within the descriptien of the acts, and, while inchoate as to specific lots until defined, these rulings attached to each section as soon as located and found to fall within the acts of Congress.

It is urged that the adoption of the Revised Statutes created a new state of the law, which brings the questions up as *res nova* annulling the prior decisions and making a new grant of lands and indemnity. The Revised Statutes are the legislative declaration of the law on the 1st day of December, 1873, and we can go back of them only to explain ambiguity (*United States vs. Bowen*, 10 Otto, 508), but we cannot see that the enactment of 1874 nullified all rights which had vested prior thereto under the various statutes as theretofore construed by competent authority; the enactment was for aid and simplicity in the future, and was not intended to tear up the past or to annul all that had gone before.

We are of opinion that the Secretary of the Interior has not authority to reopen the claims of the State of Illinois specified in his letter to this court dated February 13, 1884, and in this view of the case we express no opinion as to the correctness of the decisions made by his predecessors.

The clerk will certify a copy of this opinion to the Secretary of the Interior for his guidance and action.